

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8309 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.L.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

BHALCHANDRA H JOSHI

Versus

GSRTC

Appearance:

1. Special Civil Application No. 8309 of 2003
MR AJ SHASTRI for Petitioner No. 1
MR ASHISH M DAGLI for Respondent No. 1
NOTICE SERVED BY DS for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE A.L.DAVE

Date of decision: 15/04/2004

ORAL JUDGEMENT

1. The petitioner is aggrieved by order of reversion
dated 2.4.2003 and has, therefore, approached this court

praying for quashing and setting aside the same and directing the respondent-authority to allow the petitioner to work as Assistant Traffic Inspector.

2. In order that the contentions raised before this court can be appreciated in proper perspective, certain facts needs to be stated.

3. The petitioner joined as a conductor with the respondent corporation in the year 1991 at Junagadh. He was confirmed to the said post on 16.9.1991. IN the year 1995, he appeared and passed the examination for the post of Traffic Controller and was placed at sr. no. 422. Then he requested for choice transfer to Rajkot and was accordingly transferred. According to the rules, he was placed at the bottom of the list in the cadre of conductor. However, since he was qualified and other qualified persons were not available, he was given ad hoc promotion as Traffic Controller on 8.9.1995. He continued to work as such. In the year 1997, Jamnagar Division was bifurcated from Rajkot Division. The petitioner was placed at Jamnagar and was given ad hoc promotion to the post of Assistant Traffic Inspector on 26.10.1998. This promotion was again ad hoc and stopgap. On 9.8.2002, the petitioner passed the examination for the post of Assistant Traffic Inspector and stood at sr. no. 38. The petitioner preferred SCA NO. 7832/2002 and obtained a stay in his favour. The petitioner again requested for his transfer to Junagadh from Jamnagar and was transferred by order dated 28.10.2002 and joined as such on 2.11.2002 at Junagadh.

4. The petition filed by the petitioner came to be disposed of by this court along with several other petitions where certain directions have been given. Following that directions, the petitioner has been reverted and, therefore, this petition.

5. The grievance of the petitioner is that he has been given two reversions instead of one following the direction of this court. He was working as Assistant Traffic Inspector and he could have been reverted to the post of Traffic Controller, instead, he has been reverted to the cadre of conductor. Another grievance is that similarly situated persons are not reverted and, therefore, discriminatory treatment is meted out to him and third grievance is that the petitioner's transfer was not a request transfer.

6. Ld. advocate Mr. Shashtri has reiterated the above grounds and has taken this court through the

relevant documents.

7. Ld. advocate for the petitioner is opposed by Mr. Dagli learned advocate for the respondent-corporation. The case of the corporation is that petitioner was promoted only on ad hoc basis. He as such continued in his original cadre of conductor. By virtue of his request transfer twice, he was placed at the bottom of the cadre to the Division where he was transferred and as such it cannot be said that he has been reverted twice.

8. Having regard to the contentions raised before this court, it may be noted at the outset that petitioner's earlier petition came to be dismissed by order dated 16/18.1.2003. No appeal is preferred against that order and has, therefore, the order has attained finality.

9. Although the respondents have not admitted the allegation regarding protection granted to similarly situated persons. The petitioner has come out with specific case. The question that requires to be considered is that whether those persons with whom petitioner claims parity are in fact identically situated. The question would be whether any of them had opted for a choice transfer or not and where would be his fixation in the seniority. This is all in arena of disputed facts.

10. So far as double reversion is concerned, again it would be a question that will have to be considered whether the petitioner can be said to have been reverted twice pursuant to the order of this court because as per the case of the respondent the petitioner continued in the cadre of conductor and was placed at the bottom of the cadre on his request transfer.

11. The contention regarding inter divisional transfer of the petitioner being not a request transfer petition cannot be given a favourable consideration at all. The transfer order annexed to the affidavit-in-reply dated 20.10.2002 clearly indicates that as it was a request transfer, the petitioner would not be entitled to TA/DA etc. Following that order, the petitioner has taken over on 2.11.2002. If the transfer was not a request transfer, the petitioner would not have joined at the new place or at least he would have agitated for permissible TA/DA. This conduct on the part of the petitioner clearly indicates that it was a request transfer. It would also be appropriate to note that the

transfer being not a request transfer, is a contention raised for the first time by the petitioner in this petition. Nowhere before he agitated on this aspect and in the opinion of this court it is not open for the petitioner to agitate on this aspect.

12. Ld. advocate Mr. Shashtri has indicated that the post in the cadre of Assistant Traffic Inspector are available in other Divisions and the petitioner is ready to go anywhere if his case is favourably considered. In light of this situation, this petition is disposed of in the following terms:

13. The petitioner may make a representation to respondent-authority setting out his grievance regarding reversion/double reversion, protection granted to similarly situated persons and for consideration of his case for being posted in the cadre of Assistant Traffic Inspector and/or alternatively in Traffic Controller. Ld. advocate Mr. Shashtri states that such a representation would be made within a period of 10 days from today.

14. If such a representation is made, the same would be decided by the respondent-corporation as early as possible preferably within three months from the date of receipt of the writ of this court. The decision of the authority shall be final.

15. At this stage, ld. advocate Mr. Shashtri on instructions from the petitioner who is present in the court, does not press this petition. The petition therefore, stands dismissed as not pressed with the above observations/directions. Notice discharged. No order as to costs.

(A.L. DAVE, J.)
mandora/